

**MINUTES OF THE MEETING
OF THE BOARD OF DIRECTORS
OF THE DEPARTMENT OF WATERWORKS**

DATE: OCTOBER 21, 2002

The meeting of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") was called to order by John Mutz, Chairperson of the Board at 5:00 p.m. in the Public Assembly Room of the City-County Building, 200 E. Washington Street, Indianapolis, Indiana.

The following Board members were present: Jack Bayt, Beulah Coughenour, S. Michael Hudson, Alan Kimbell, John Mutz and Samuel L. Odle

I. Approval of the Minutes of September 26, 2002

Chairperson Mutz asked for questions or comments from the Board concerning the minutes of the meeting of the Board as set forth in Exhibit A, attached hereto and made a part hereof ("Minutes"). A motion was made and seconded to approve the Minutes. The Board unanimously approved the Minutes.

II. Financial Report of the Controller

Mr. Robert Erney, Financial Manager of the Department, read the financial report of the Controller as set forth in Exhibit B, attached hereto and made a part hereof ("Financial Report").

Mr. Odle asked if a historical perspective has been ascertained concerning the aging accounts receivable. Mr. Erney stated they are improving. Chairperson Mutz requested that the Board receive comparative aging accounts receivable data.

Chairperson Mutz asked why there are a larger number of accounts receivable in one district compared to others. Mr. Erney answered it is due to the number of customers per district.

Mr. Odle asked if the Department indicates its debt service payment in the operating report. Mr. Erney indicated this data is reported but that those payments are made in January and July and the year to date figure is in the Financial Report.

III. Report of USFilter Indianapolis Water, LLC

Mr. James H. Buckler, Operations Manager of USFIW read the report of USFIW as set forth in Exhibit B, attached hereto and made a part hereof ("USIFW Report").

Mr. Bayt asked if a contractor causes a water main break, is the contractor legally liable.

Mr. Buckler introduced Carolyn Mosby, Director of Communications of USFIW.

IV. Report of Director of Contracts and Operations

Mr. Carlton Curry, Director of Contracts and Operations introduced Angela Clerget as the Contract Analyst of the Department. Mr. Curry read the report of the Director of Contracts and Operations as set forth in Exhibit C, attached hereto and made a part hereof (“Operations Report”).

V. Initial Review of Proposed 2003 Department of Waterworks Budget

Mr. Erney summarized the proposed 2003 Department Budget as set forth in Exhibit D, attached hereto and made a part hereof (“Initial Proposed Budget”).

Mr. Kimbell asked if the debt service payments account for the proposed sale of UDC. Mr. Erney answered they do not and that some figures of the Initial Proposed Budget will change as a result of the sale of UDC.

Mr. Odle asked what are the payments to the pension trust. Mr. Erney stated that those payments are made to the pension trust as an obligation the City (as defined below) assumed from NiSource, Inc. Chairperson Mutz asked if the personal services figures are predicated on a five percent model and if the City of Indianapolis (“City”) will use such a model. Mr. Erney responded that the figures are based on such a model and that the City will use a two percent model. Mr. Erney stated that the Board has the authority to determine the model it chooses to follow.

Chairperson Mutz asked if the Board is required to conduct several readings of the budget to be eventually adopted by the Board. Mr. Kobi M. Wright, Special Assistant Corporation Counsel, stated the Board is not required to do so and that the Board will have the opportunity to approve a budget next month. Mr. Hudson asked when the Board must approve a budget. Mr. Erney answered that the Department must have an approved budget by November 30th and a copy of the budget must be filed with the City-County Council by November 8th.

Mr. Erney stated no short term borrowing is contemplated in the Initial Budget Review however that is subject to change based upon a review of recommended capital projects that may require the Department to borrow funds.

Mr. Odle asked if any additional staffing is anticipated. Mr. Erney stated no.

VI. Resolution No. 44, 2002- Approval of the Asset Purchase Agreement for Sale of the Assets of the Utility Data Corporation (“UDC”) to USFIW

Chairperson Mutz summarized that the management agreement between the Department and USFIW contemplated a sale of UDC to USFIW pursuant to some option terms of the

management agreement. He further stated that the Board subsequently chose to entertain other options concerning the sale of UDC and employed Lane Birch to analyze the matter. He further stated that following Mr. Birch's analysis the Board decided to sell UDC to USFIW and that the purchase agreement for consideration pursuant to the resolution is a result of months of negotiations on the matter.

Mr. James Strain of Sommer Barnard Ackerson, PC stated that the material terms of an agreement have been resolved and that the resolution requests approval of those terms and assignment to Chairperson Mutz, Vice-chairperson Odle and Mr. Hudson the authority to resolve the remaining details of any agreement. Mr. Strain read a presentation of an overview of the transaction as set forth in Exhibit E, attached hereto and made a part hereof.

Mr. Hudson asked if the software entity will be in the City. Mr. Strain answered that the entity will remain either in the City or in the waterworks district. Mr. Odle asked if the collection rate incentive to be agreed upon will be based on whether the Department receives more cash in hand upon USFIW obtaining the incentive rate. Mr. Strain responded affirmatively.

Chairperson Mutz asked if the Department has evidence that the UDC software sold to the City is fundamentally faulty. Mr. Strain responded affirmatively and that such evidence can be found in reports. Chairperson Mutz asked if Mr. Strain has determined the extent of any damages. Mr. Strain stated the figure will be in the million of dollars.

Chairperson Mutz asked Mr. Birch if the procedure presented in the UDC Summary Agreement addresses the concerns Mr. Birch set forth in his June 7, 2002 report to the Board concerning the protection of source code data. Mr. Birch stated the UDC Summary Agreement calls for placing such data in escrow thus the UDC Summary Agreement does address his concerns. Chairperson Mutz further asked if this procedure is similar to the process utilized by the former Indianapolis Water Company to protect the source code containing its waterworks customers separate from billing obligations outside of the waterworks district. Mr. Birch stated it is similar. Mr. Strain stated it is stronger than that used by the former Indianapolis Water Company.

Chairperson Mutz asked if all of Mr. Birch are adequately addressed in the agreement. Mr. Birch responded affirmatively. Ms. Coughenour asked when the effective date would be. Mr. Strain stated it will be on November 1, 2002 however the closing date will likely be in the second week of November.

Mr. Kimbell moved to adopt Resolution 44, 2002 and the motion was seconded. Chairperson Mutz asked about the private use restriction of the former water company headquarters for UDC business. Mr. Strain responded that in consultation with bond counsel, the agreement reached meets the restriction. Mr. Erney responded that he believes private use cannot exceed fifteen percent.

The Board unanimously adopted Resolution 44, 2002.

VII. Resolution 46, 2002-Approval of Department/USIFW Vehicle Use Policy

Mr. Wright stated that following extensive negotiations and consultations with USFIW, a proposed vehicle use policy is before the Board for consideration. He also stated that the vehicle use policy addresses that the City owns the vehicles used by USFIW and that municipal law prohibits personal use of city assets. He also stated that the vehicle use policy reflects expected revisions that will occur to the City's current vehicle use policy. Mr. Wright added that a monthly mileage benchmark for take home vehicle use would not be effective until November 1, 2003 given that no current figures are available to determine past vehicle mileage per the terms of the proposed policy. He then summarized the resolution.

Chairperson Mutz asked to amend Resolution 44, 2002 to state that certain sections of the vehicle use policy shall not be implemented until November 1, 2003 per the agreement of USFIW and the Department as stated by Mr. Wright. Chairperson asked if this policy changes how the former Indianapolis Water Company employees were treated. Mr. Wright stated that the proposed policy requires that USIFW employees use the City's vehicles pursuant to municipal law. Mr. Wright stated that he is aware that USFIW will make rental payments to the City from November 1, 2002 to the end of 2002 to permit individuals currently using those vehicles as take home vehicles to continue to do so. He deferred to Mr. Buckler to address any further steps USIFW is pursuing with those employees affected by the proposed policy.

Mr. Buckler stated that beginning January 1, 2003, USFIW will pay \$400 per month to affected USFIW employees as a car allowance which shall terminate in April 2004. Chairperson Mutz asked if the proposed policy is a change in policy for its employees. Mr. Buckler responded affirmatively.

Vice-chairperson Odle moved to adopt the resolution as amended and such motion was seconded by Mr. Bayt. The Board unanimously adopted Resolution 45, 2002, as amended.

VIII. Resolution 46, 2002- Approval of Grant of Easement to Indiana University

Mr. Wright summarized the resolution. Mr. Kimbell stated that he has examined the property subject to the proposed easement and believes that the contemplated use of the property is beneficial and that Mr. Curry is addressing how the Department may sell the railroad iron to be removed from the property. Mr. Kimbell moved for the adoption of the resolution and such motion was seconded. Mr. Odle asked if the Department is obligated to maintain the easement if the Department chooses to build upon the easement. Mr. Wright stated that legally if the Department chooses to construct upon the easement, the Department would have to recognize the university's easement rights however the maintenance of the easement is the university's obligation.

Vice-chairperson Odle asked why the consideration to be paid by the university is not in the resolution. Mr. Wright stated that the university and the Department of Public Works have previously adopted resolutions on this matter which state the level of consideration will be zero at an amount to be determined, thus, the Department must adopt similar language in order to comply with statutory requirements. Vice-chairperson Odle asked given that the university is spending millions of dollars on the life sciences initiative that will eventually increase the Department's customer base, is there a need to charge the university for the easement. Mr. Wright stated that Mr. Curry determined the fair market value of the grant and that he and Mr. Curry presented it to the university which subsequently agreed to the amount.

Mr. Hudson asked if the grant affects the management agreement with USFIW. Mr. Wright stated no. The Board unanimously adopted the resolution.

IX. Resolution No. 48, 2002- Ratification and Approval of Capital Projects Commenced by the Former Indianapolis Water Company

Mr. Curry summarized the resolution. Vice-chairperson Odle asked for the total amount of the capital projects to be approved. Mr. Erney stated that the amount is close to \$10 million. Mr. Kimbell asked about a \$4 million conversion project and asked if it will be completed on the stated completion date of December 31, 2002. Mr. Curry responded affirmatively.

Mr. Kimbell moved for the adoption of the resolution which was seconded by Vice-chairperson Odle. The Board unanimously adopted the resolution.

X. Resolution No. 49, 2002- Approval of Procedure for Emergency Capital Projects

Mr. Wright summarized the resolution. Mr. Bayt asked if a cap exists for these projects. Mr. Wright stated a cap is not included given that some emergency projects that are high in cost would need to be acted upon quickly and setting a cap would hinder the Department's ability to do so. Mr. Wright further stated that the Executive Committee under the proposed resolution may choose to not approve an emergency capital project that appears to be too high in cost. He also stated that the Board meets every month thus if a project commences and the Board later chooses to terminate the funding of such emergency project, the Board's meeting schedule provides it with the ability to do so likely before the completion of an expensive emergency capital project.

Mr. Bayt stated he agreed in principle but questioned if the Board would meet once per month. Mr. Wright stated that a municipal ordinance effectively requires that the Board meet once per month. Mr. Hudson asked if the terms "catastrophic failure" of the resolution would limit emergency capital projects to those with significant financial loss. Mr. Wright stated other language could be suggested. Chairperson Mutz asked if Ms. Coughenour was aware of emergency capital project language used by the White River Environmental Partnership ("WREP"). Ms. Coughenour stated that she is not a member

of the Board that would approve such language thus she is unaware of language used by WREP on similar matters

Chairperson Mutz, Vice-chairperson Odle and Mr. Kimbell stated that they believe “catastrophic failure” may limit the ability to move forward on projects that are truly emergency in nature but are not “catastrophic failures”. Mr. Wright responded that the language is conservative and can be revised. Mr. Kimbell moved to amend the resolution to strike the following language of (iii) of the second preamble of the resolution: “to avoid or prevent a catastrophic failure of the waterworks system”.

The motion was seconded. The Board unanimously adopted the resolution as amended.

XI. Resolution 49, 2002- Approval of Mail Insert Policy

Mr. Curry summarized the resolution. Ms. Coughenour asked if any increase in the postage amount would be borne by USFIW. Mr. Curry stated it would be unfair for USFIW to bear the costs of a large insert that causes an increase in fees. Mr. Bayt asked if such an insert occurred then the Board would have ability to waive those fees. Mr. Curry responded that if such an insert was included such a discussion would be entered into by the Department and USFIW.

Mr. Wright added that the resolution gives the Department’s staff the authority to implement the policy. He also stated the Department would only bear the costs of any increase in postage related to nonwaterworks matters. Mr. Bayt asked if non-profit and governmental inserts only would be included. Mr. Curry stated only governmental inserts would be included. He also stated that this policy does not preclude USFIW from mailing its own nonprofit inserts.

A motion was made to adopt the resolution and seconded. The Board unanimously adopted the resolution.

XII. Resolution No. 50, 2002- Approval of Capital Projects for Meridian Option 61C Telephone Switch

Mr. Curry summarized the resolution. Mr. Hudson asked if this matter meets the accounting requirements that the item be capitalized and not expensed. Mr. Curry responded affirmatively. Chairperson Mutz asked Mr. Erney if funds exist in the current budget to fund this matter. Mr. Erney responded affirmatively. Chairperson Mutz asked Mr. Buckler if this item needs to be purchased. Mr. Buckler responded affirmatively.

Vice-chairperson Odle asked if the purchase of the item is subject to the bidding process. Mr. Curry stated that it is subject to USFIW’s bidding process.

A motion was made to adopt the resolution and seconded. The Board unanimously adopted the resolution.

XIII. Other Business

Mr. Glenn Pratt stated that USFIW should give more notice of the Citizens Advisory Group meetings. He also stated that more work should be undertaken in conjunction with members of the community at large to address phosphorous issues of the watersheds. Mr. Pratt asserted that runoff and residential fertilizer use are the primary producers of phosphorous in the reservoirs. He stated that more should be undertaken to work with the community at large to assist USIFW to meet certain obligations of the management agreement with the Department particularly a review of the watersheds and establishment of a technical advisory group.

Approved this 18th day of November 2002.

John Mutz, Chairperson

Attest:

S. Michael Hudson,
Secretary